

Testimony of

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Good morning Mr. Chairman. and Members of the Committee. I appreciate the opportunity to discuss with you EPA's responsibilities under the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act. I share your concern for the importance of small business in our economy and our society, as well as your determination to ensure small businesses are treated fairly by Federal regulatory programs.

I am privileged to work for an Administrator who has been a strong supporter of both small business and the environment in her own State of New Jersey. Governor Whitman has vigorously administered New Jersey's own statute requiring regulatory flexibility analysis for small businesses covered by State requirements. And under her leadership New Jersey initiated a program called "greenstart" to provide on-site consultation on environmental compliance to firms with fewer than 100 employees, as well as municipalities with populations under 10,000. Under most conditions, when violations are found through these voluntary inspections, firms that make the necessary corrections within six months can now avoid the penalties that would otherwise apply.

The Regulatory Flexibility Act went into effect in 1980, requiring Federal agencies to actively consider the impacts of forthcoming regulations on small businesses. For certain rules, the RFA also required agencies to consider regulatory alternatives that would meet the underlying objectives of the authorizing legislation, while minimizing burdens on small businesses. In 1995 the White House Conference on Small Business recommended that Federal agencies give greater priority to their responsibilities under the RFA. Heeding the voice of small business, this Committee took action to

strengthen the statute in 1996 by means of the SBREFA amendments. Without doubt, Federal attention to small businesses in the regulatory process is markedly stronger today because this Act is on the books. Even so, the question that brings us together this morning looks beyond the improvements SBREFA has engendered. Instead, we must ask ourselves, are we doing well enough by small business yet?

While I cannot speak from a great deal of current experience within EPA, I would like to share with you today a few important observations about what I have found since returning to the Agency.

Mr. Chairman, small-business concerns are a key priority for Governor Whitman, but I think it only fair to note that EPA has compiled a record of responsiveness to small business from the very first. The 2000 report to the President by SBA's Chief Counsel for Advocacy observes the following:

The US Environmental Protection Agency (EPA) has taken its responsibilities under the RFA seriously since the law's enactment in 1980. EPA's successes in this regard are not surprising, however, since several principles underlying the RFA were developed from an examination of EPA's regulatory work. Further, some provisions of SBREFA were also modeled after EPA programs. Although there remains a wide variance in RFA compliance in individual EPA rulemakings, the agency has historically received high marks from Advocacy for its overall efforts.

Immediately after SBREFA became law, EPA set up a Task Force to establish procedures for administering the Act. That Task Force produced guidelines that are by far the most specific and comprehensive of those employed by any agency in Government. The Agency appointed its Small Business Advocacy Chair and provided a central staff to coordinate EPA's RFA responsibilities. In 1999 that staff revised and updated the SBREFA guidance, and today they consult broadly with EPA programs on the identification and analysis of small business issues in regulation.

EPA needs to pay close attention to the RFA. The judicial review provisions of SBREFA have raised the stakes for full compliance with the law, and EPA takes its obligation to comply with the law seriously. In addition to working with the program offices at critical milestones in the development of a rule, staff in my office also review each action before it is forwarded to the Administrator to assure the requirements of this and other administrative statutes are met. In short, these provisions of the Regulatory Flexibility Act have imposed an important discipline on EPA's actions.

Another factor that has sharpened EPA's attention to small businesses is the Panel provision of SBREFA. Along with OSHA, EPA is required to conduct a Small Business Advocacy Review Panel unless it certifies that a rule, if promulgated, will not impose a significant economic impact on a substantial number of small entities. So far EPA has completed 21 of these Panels in partnership with SBA's Chief Counsel for Advocacy and OMB's Administrator of the Office of Information and Regulatory Affairs. Over the course of these Panels the three agencies have consulted with over 300 representatives of small businesses and communities, and completed reports contain over 230

recommendations to the EPA Administrator on ways to ease regulatory burden on small entities. Panel recommendations range from asking EPA to clarify technical details of the rule to proposing alternative regulatory approaches. It is EPA policy to discuss each of the Panel's recommendations in the proposed rule and in practice the Agency adopts most of them. We plan to convene our 22nd Panel next month, and we are preparing to launch three others over the next several months.

SBREFA Panels are intense and time-consuming for the Agency. EPA's experience has shown it takes substantial staff and contract resources, and a minimum of five months of effort, to complete a Panel. In addition to the 60-day statutory term of the Panel, at least three months of extensive preparations are necessary to develop and provide materials that educate small entity representatives and the participating Agencies about the regulatory choices to be made.

Yet there has been real benefit from the process to small businesses. Despite their difficulty and expense, the Panels conducted to date have produced recommendations that have ensured necessary environmental protection while reducing the potential burden on small businesses and communities. For example, a rule to guard against contamination of ground water through the injection of waste into wells eventually allowed many small businesses to use their wells under permit, rather than banning their use entirely, as EPA had been considering. Small petroleum refineries will receive substantial extra time to comply with requirements to reduce sulfur in the nation's gasoline supply, this and other recommendations from the Panel will, according to SBA's estimates, result in annual savings of \$91 million dollars. And a rule setting guidelines for water pollution control by industrial laundries was

proposed with a request for comment on a “no regulation” option. That rule was never promulgated, because information provided by small businesses suggested that it would have cost far too much for too little environmental improvement . The industry has subsequently agreed to operate under voluntary mechanisms to limit pollution in its waste water.

As influential as the SBREFA Panels have been, they do not represent EPA’s full commitment to consider small businesses in the rulemaking process. EPA is obliged by both policy and common sense to conduct outreach and seek accommodations for small entities in all regulations to which they will be subject. In the nearly five years since SBREFA’s effective date of June 28, 1996, EPA has issued numerous regulatory proposals that would have imposed some level of regulatory requirement on at least one small business or community. Most of these did not undergo SBREFA Panel review, but EPA has nevertheless worked with small businesses and communities to minimize their burden while meeting the requirements of environmental statutes. For example, under the Wood Building Products Surface Coatings regulation, if an owner/operator uses less than 1,500 gallons of coating per year, the facility will be exempt from the control requirements of the rule. This ensures that small businesses with relatively low emissions need not invest in high-cost solutions to a minor part of the problem. In another case, EPA issued new rules for non-road spark-ignition engines. Consulting early and often with small businesses, the Agency agreed to reduce testing requirements and extended the compliance deadline for manufacturers of small volumes of regulated engines or equipment.

Important as it is that the Agency conduct appropriate outreach to small businesses in all rules

to which they will be subject, it is always possible to overlook some aspect of a rule's potential effects prior to placing it before the public for comment. That is why the Administrative Procedure Act continues to provide vital protection to small businesses, and the public more generally, in the regulatory process. But I expect EPA programs to make all reasonable efforts to identify and address small-business impacts prior to proposal, and to supplement that consideration after proposal with whatever additional information that public comment may provide. Governor Whitman has asked me to lead an agency-wide review of EPA's rulemaking procedures to strengthen the quality of the scientific and economic analysis that underlies our actions. As this work proceeds over the next 45 days, I will also seek ways to further enhance the dialogue EPA conducts with small businesses and the consideration we give their particular needs in the rulemaking process.

Mr. Chairman, we have arrived at a point in our history when most of the large, conspicuous sources of pollution are being addressed. We now face the challenge of pollution from numerous, diffuse sources -- many of which will inevitably be found in small businesses and communities. We will need to construct solutions that are effective, tailored to site-specific conditions, and relatively inexpensive to carry out in comparison to "one-size-fits-all" national standards. If sensitivity to the needs of small businesses and communities has been important up until now, it will be absolutely critical in the years to come. I look forward to working with the members and staff of this Committee. Thank you for the opportunity to present my views to you this morning, and I will be happy to answer your questions.

